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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,672	04/16/2004	Richard F. Gladney	SMCY-P02-085	9591

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ROPES & GRAY LLP  
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BOSTON, MA 02110-2624

EXAMINER
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SANTOS, ROBERT G

ART UNIT	PAPER NUMBER
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3673

MAIL DATE	DELIVERY MODE
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06/15/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/826,672	GLADNEY, RICHARD F.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Robert G. Santos	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 March 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3 and 7-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Broyles '729 in view of Gelbart '907, and further in view of U.S. Pat. No. 4,145,781 to Autrey et al. As concerns claims 1-3 and 8-26, Broyles lacks the use of a mattress foundation (C) having at least one sidewall outer surface (2-5) with a pattern unitarily formed thereon which is substantially planar or three-dimensional, as well as the use of at least one ground support member (f) which also includes a pattern, wherein "unitarily" includes non-attachably and wherein "unitarily formed" includes formed using at least one of molding, etching, embossing, engraving, carving, stamping, silhouetting and sculpting. Gelbart provides the basic teaching of a mattress foundation (2) that "can be provided with a surface which simulates natural wood" (see column 3, lines 52-55), whereas Autrey et al. provide the basic teaching of a mattress foundation (111) for supporting a companion mattress (141) wherein the mattress foundation comprises a sidewall (119) having a pattern that is substantially comparable to a quilted surface (143, 144) of the companion mattress. The skilled artisan would have found it obvious at the time the invention was made to provide the mattress assembly of Broyles with a mattress foundation comprising at least one sidewall outer surface and at least one ground support

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member each having a pattern unitarily formed thereon, wherein "unitarily" includes non-attachably and wherein "unitarily formed" includes formed using at least one of molding, etching, embossing, engraving, carving, stamping, silhouetting and sculpting, in order to impart a finished appearance to the mattress assembly as desired.

With regards to claim 7, Broyles is considered to show a condition wherein a pattern (12) is formed on at least a portion of the upper side of the top surface (1) of the mattress foundation (C) in Figure 1 and in column 2, lines 58-62.

3. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Broyles '729 in view of Gelbart '907 and Autrey et al. '781, and further in view of Saputo '946. Broyles, as modified by Gelbart and as further modified by Autrey et al., does not specifically disclose the use of a headboard tangentially extending vertically along one end of the foundation. Saputo provides the basic teaching of a plastic mattress foundation (10) provided with brackets (59, 60) for securing a headboard thereto. The skilled artisan would have found it obvious at the time the invention was made to provide the mattress foundation of Broyles, as modified by Gelbart and as further modified by Autrey et al., with a headboard tangentially extending vertically along one end of the foundation in order to impart a more finished appearance thereto.

4. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Broyles '729 in view of Gelbart '907 and Autrey et al. '781 and further in view of Saputo '946 as applied to claim 4 above, and further in view of Bellows et al. '191. Broyles, as modified by Gelbart and as further modified by Autrey et al. and Saputo, does not specifically disclose a condition wherein

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the headboard is constructed substantially of plastic material. Bellows et al. provide the basic teaching of a plastic bed frame (10) including a headboard (16) and constructed from a plastic material (see Bellows et al. '191, column 3, lines 37-39). The skilled artisan would have found it obvious at the time the invention was made to provide the mattress foundation of Broyles, as modified by Gelbart and as further modified by Autrey et al. and Saputo, with a headboard constructed substantially of plastic material since such a headboard is generally well known as being economical and lightweight as taught by Bellows et al., thereby also facilitating attachment to a mattress foundation.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Broyles '729 in view of Gelbart '907 and further in view of Autrey et al. '781, Saputo '946 and Bellows et al. '191 as applied to claim 5 above, and further in view of Wallace et al. '537. Broyles, as modified by Gelbart and as further modified by Autrey et al., Saputo and Bellows et al., does not specifically disclose a condition wherein an outer surface of the headboard includes a pattern. Wallace et al. provide the basic teaching of a headboard (12) provided with a pattern (21) on its outer surface (18). The skilled artisan would have found it obvious at the time the invention was made to provide the mattress foundation of Broyles, as modified by Gelbart and as further modified by Autrey et al., Saputo and Bellows et al., with a headboard having an outer surface including a pattern in order to "enhance the attractiveness and beauty of the structure" as desired (see Wallace et al. '537, column 1, lines 3-9).

***Response to Amendment***

Applicant's arguments with respect to claims 1-26 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hofmann '583.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

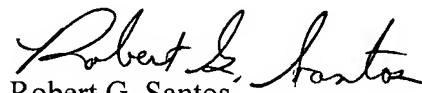
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert G. Santos whose telephone number is (571) 272-7048. The examiner can normally be reached on Tues-Fr and first Mondays, 10:30 a.m. to 8:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia L. Engle can be reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Robert G. Santos  
Primary Examiner  
Art Unit 3673

R.S.  
June 10, 2007